

1 Michael Gerard Fletcher (State Bar No. 070849)
mletcher@frandzel.com
2 Gerrick M. Warrington (State Bar No. 294890)
gwarrington@frandzel.com
3 FRANDZEL ROBINS BLOOM & CSATO, L.C.
1000 Wilshire Boulevard, Nineteenth Floor
4 Los Angeles, California 90017-2427
Telephone: (323) 852-1000
Fax: (323) 851-2555

6 | Attorneys for Secured Creditor
ARCHWAY BROADWAY LOAN SPE, LLC

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

12 In re
13 SEATON INVESTMENTS, LLC, *et al.*,
14 Debtors and Debtors-in-
15 Possession.
Lead Case No. 2:24-bk-12079-VZ
Jointly Administered with Case Nos.:
2:24-bk-12080-VZ; 2:24-bk-12081-VZ;
2:24-bk-12082-VZ; 2:24-bk-12091-VZ;
2:24-bk-12074-VZ; 2:24-bk-12075-VZ;
2:24-bk-12076-VZ

10 Affects:

17 All Debtors
18 Seaton Investments, LLC
19 Colyton Investments, LLC
20 Broadway Avenue Investments, LLC
21 SLA Investments, LLC
22 Negev Investments, LLC
23 Alan Gomperts
24 Daniel Halevy
25 Susan Halevy

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2:24-bk-12082-VZ; 2:24-bk-12091-VZ;
2:24-bk-12074-VZ; 2:24-bk-12075-VZ; and
2:24-bk-12076-VZ

Chapter 11

**ARCHWAY BROADWAY LOAN SPE,
LLC'S OPPOSITION TO RENEWED
MOTION OF DEBTOR AND DEBTOR IN
POSSESSION BROADWAY AVENUE
INVESTMENTS, LLC FOR ORDER
AUTHORIZING DEBTOR TO ENTER
INTO POST-PETITION LEASE**

Date: December 12, 2024

Time: 11:00 a.m.

Crtrm.: 1368

255 E. Temple Street
Los Angeles, CA 90012

Hon. Vincent P. Zurzolo

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FRANDZEL ROBINS BLOOM & CSATO, L.C.
1000 WILSHIRE BOULEVARD, NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90017-2427
(323) 852-1000

1 Secured creditor, Archway Broadway Loan SPE, LLC, a Delaware limited liability
2 company, successor in interest to Archway Real Estate Income Fund I REIT, LLC (“Archway”),
3 submits this opposition (“Lease Opposition”) to the *Renewed Motion of Debtor and Debtor in*
4 *Possession Broadway Avenue Investments, LLC for Order Authorizing Debtor to Enter into Post-*
5 *Petition Lease* (“Renewed Lease Motion”) (Dkt. 310) filed in the lead case of those jointly-
6 administered debtors, Seaton Investments, LLC (“Seaton”), Colyton Investments, LLC
7 (“Colyton”), Broadway Avenue Investments, LLC (“Broadway”), SLA Investments, LLC
8 (“SLA”), and Negev Investments, LLC (“Negev” and collectively with Seaton, Colyton,
9 Broadway and SLA, the “Corporate Debtors”) and Alan Gomperts (“Mr. Gomperts”), Daniel
10 Halevy (“Mr. Halevy”), and Susan Halevy (“Ms. Halevy” and collectively with Mr. Gomperts and
11 Mr. Halevy, the “Individual Debtors” and collectively with the Corporate Debtors, the “Debtors”).

12 **I. Introduction**

13 Broadway has whitewashed these lease and loan transactions, but the underlying problem
14 remains the same. The Court denied the prior lease and loan motions after Broadway attempted to
15 withdraw them. This occurred immediately after Archway revealed that Broadway’s “team” was
16 composed of a disbarred felon convicted of narcotics money laundering and a thief who—just a
17 few months ago—was held in contempt for stealing assets from a federal receivership and lying to
18 the receiver about it. Within the span of only a few weeks, Broadway has refiled these same lease
19 and loan motions, except it has deleted the names of the bad actors. No explanation is given. No
20 disclosure of these bad actors’ current involvement or connections to the current players is given.

21 The silence is deafening.

22 Aside from this, the lease is not in the best interests of the estate. There is no lease
23 guarantor. There are no financials for the proposed tenants or disclosure of the financial track
24 record of the proposed tenants who operate out of a mailbox store. There is no explanation about
25 how Broadway will fund the \$240,000.00 DIP loan fee which is due on closing, much less the
26 interest payments or seven-figure balloon payment due in one year. Rent obligations don’t even
27 start until a certificate of occupancy is obtained—a feat that has eluded Broadway for a decade.

28 The Court should, once again, deny these renewed motions.

1 **II. Background**

2 The following background section sets forth the most relevant facts concerning these
3 Renewed Lease and Loan Motions.

4 **A. Broadway has now “deleted” certain bad actors, but its nondisclosure persists.**

5 Last week, on November 19, 2024, the Court denied the Original Lease and Loan Motions
6 without prejudice and asked that Broadway lodge orders to that effect. *See Tentative Rulings for*
7 *11/19/2024*. Broadway has apparently yet to lodge orders to that effect.

8 A few days later, Broadway deleted Mr. Steve Bombola and Mr. David Schwarcz, among
9 others, from the Lease and re-filed essentially the same original motions as “renewed” motions. A
10 comparison of the original motions and the renewed motions reflects that essentially the two sets
11 of motions are identical, except for the deletion of the bad actors and their entities.

12 But just as before, there is no disclosure as to Mr. Bombola and/or Mr. Schwarcz
13 involvement behind the scenes. There is no disclosure as to the connections between and among
14 Mr. Bombola and/or Mr. Schwarcz and/or Mr. Ahron Stock. There is also no disclosure of the
15 financials of the proposed tenants, Levav Group, LLC or The DMB Fund.

16 The Renewed Lease Motion purports to attach Levav Group’s financials, but the
17 documents attached are not financial statements of *Levav Group*—they are other companies with
18 no apparent connection to Levav Group.

19 The renewed motions also fail to set forth the material facts and circumstances surrounding
20 the Court’s denial of their prior original motions, as required by Local Rule 9013-1(l).

21 **B. What wasn’t and still isn’t being disclosed by Broadway and Mr. Gomperts.**

22 Archway originally moved for relief from the automatic stay (Dkt. 213) (“Original
23 MRAS”) back on October 8, 2024. The Court denied the Original MRAS without prejudice based
24 on Broadway’s *Amended Motion of Debtor and Debtor in Possession Broadway Avenue*
25 *Investments, LLC for Order Authorizing Debtor to Enter into Post-Petition Lease* (Dkt. 248)
26 (“Original Lease Motion”) and *Amended Motion of Debtor and Debtor in Possession Broadway*
27 *Avenue Investments, LLC for Order Authorizing Debtor to Obtain Post-Petition Financing*
28 *Pursuant to 11 U.S.C. Section 364* (Dkt. 253) (“Original Loan Motion” and together with the

1 Original Lease Motion, the “Original Motions”), which were filed on October 28, 2024, the day
2 before the hearing on the Original MRAS.

3 In the Original Motions, Broadway announced that it had “assembled a team” that was
4 ready to execute on a project to lease the entire Broadway Property and to provide medical and
5 social services to Los Angeles homeless and transient population. Lease Motion at 5:20–28. Per
6 Mr. Gomperts, Broadway had developed this project “over the prior 6 months” (Lease Motion at
7 7:9–10) and the lease and loan would make Broadway’s ability to confirm a plan of reorganization
8 “assured.” Lease Motion at 6:3–5.

9 Broadway and Mr. Gomperts presented its “team”—including Mr. Schwarcz and
10 Mr. Bombola and the proposed lease with entities controlled by them—as a “huge win for
11 Broadway.” Original Lease Motion at 6:14.

12 As presented to the Court, Mr. Schwarcz’s and Mr. Bombola’s entities—DMB and Zenith
13 respectively—were responsible for handling government grant money to be paid to the tenants and
14 then remitted to Broadway in the form of rent under the lease. *See* Bombola Decl., Dkt. 249 at
15 2:9–13.

16 However, Mr. Gomperts did not disclose to the Court that he has done essentially no due
17 diligence on Mr. Bombola and that—perhaps worse—he knew about Mr. Schwarcz’s misdeeds
18 before filing the Original Motions.

19 A quick Google search of the name “Bombola” brings up numerous lawsuits involving him
20 and his companies, including an ongoing federal receivership where Mr. Bombola was just
21 recently held in contempt for stealing receivership assets and proceeds though his shell company
22 and lying to the receiver about it. *See* Warrington Decl. Exh. 11. This scheme by Mr. Bombola
23 began by his applying for government grant money to purportedly help Oklahoma’s “poorest
24 counties.” Warrington Decl. Exh. 1. It ended up in two bankruptcy cases, a federal receivership,
25 and multiple lawsuits against Mr. Bombola. *See* Warrington Decl., GERR-061. Apparently,
26 Mr. Gomperts was completely *unaware* of Mr. Bombola’s misdeeds or of the fact that he had
27 numerous creditors pursuing him at the time. Warrington Decl. ¶¶ 22–26. All of this information,
28 however, was readily available on the internet. *See, generally,* Warrington Decl.

FRANDZEL ROBINS BLOOM & CSATO, L.C.
1000 WILSHIRE BOULEVARD, NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90017-2427
(323) 852-1000

1 The same goes for Mr. David Schwarcz. A quick Google search for Mr. Schwarcz reveals
2 that he was a California lawyer, but that he was disbarred in 2021. Further inquiry reveals that he
3 was disbarred because of his felony conviction in connection with money laundering connected to
4 narcotics.

5 Mr. Bombola and Mr. Schwarcz are—or at least were—intimately connected to these lease
6 and loan transactions and to each other. Although Mr. Schwarcz “removed” himself as CEO of
7 DMB on November 5, the day before that, he and Mr. Bombola formed Zenith Management,
8 LLC—an entity running out of Mr. Schwarcz’s home at 2350 Castle Heights Avenue, in Los
9 Angeles, California. Zenith was the name of the proposed tenant that Broadway has now
10 “removed” from these transactions because of their connections with Mr. Bombola.

11 But the connections between and among Mr. Schwarcz and his company, DMB, and
12 Mr. Bombola, remain. The Renewed Motions provide no explanation for or disclosure about these
13 bizarre last-minute actions including the changing of DMB’s CEO, the removal of Mr. Schwarcz
14 and Zenith, or the creation of a new Zenith entity that is being run by both Mr. Bombola together
15 with Mr. Schwarcz. Warrington Decl. Exhs. 23, 24.

16 The new “front man” for DMB is Mr. Steve Gold. Again, nothing is disclosed about him or
17 his connections to Mr. Schwarcz and Mr. Bombola. An internet search shows that Mr. Gold has
18 longstanding connections with Mr. Schwarcz. For example, Mr. Gold is the manager of FRNY
19 LLC, which was described by the California Court of Appeal as Mr. Schwarcz’s “dummy
20 corporation,” in connection with a fraudulent scheme perpetrated by Mr. Schwarcz involving fraud
21 in connection real property and leasing transactions. Warrington Decl., Exh. 22, 25. In fact,
22 Mr. Gold testified on behalf of Mr. Schwarcz in connection with his disbarment proceedings.
23 Warrington Decl., GERR-150.

24 Broadway has not disclosed the connections between and among Mr. Schwarcz,
25 Mr. Bombola, Mr. Gold, and the other proposed tenant, Levav Group or its principal Mr. Stock.

26 Prior to filing the Original Lease and Loan Motions, Mr. Gomperts was *aware* of
27 Mr. Schwarcz’s misdeeds, but he failed to disclose those to the Court or parties in interest.
28 Warrington Decl., ¶¶ 22–26. Mr. Schwarcz used to be the CEO of The DMB Fund—the proposed

FRANDZEL ROBINS BLOOM & CSATO, L.C.
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1 tenant under the current Lease. But, on November 5, 2024, based on discussions with
2 Mr. Gomperts, among others, Mr. Schwarcz removed himself as CEO of DMB. Warrington Decl.,
3 ¶ 26; Exh. 23. None of this was ever disclosed by Broadway or Mr. Gomperts to the Court.

4 Although almost all mentions of Mr. Bombola and his company, Zenith, have been
5 “removed” from the motions, no disclosure of his continue involvement in these transactions, if
6 any, has been made by Broadway or Mr. Gomperts.

7 The “renewed” motions still do not disclose the extent of Mr. Bombola’s and/or
8 Mr. Schwarcz’s involvement, behind the scenes, in these proposed renewed lease and loan
9 transactions.

10 And yet, from the beginning, Mr. Bombola was the key promoter of these lease and loan
11 transactions. On July 10, 2024, Archway and its counsel met with Mr. Gomperts and Broadway’s
12 counsel along with Mr. Bombola in an in-person settlement meeting. Warrington Decl., ¶ 8. At
13 that meeting, Mr. Bombola did not disclose that just the week prior he had been held in contempt
14 of a federal receivership order because of his theft of receivership assets. Warrington Decl., ¶ 9.
15 Later, on September 25, 2024, Mr. Bombola called Archway’s counsel and stated his apparent
16 interest in buying the Broadway Property for \$5 million. Warrington Decl., ¶ 10. This was very
17 odd to Archway, given that Mr. Bombola Archway does not own the Property, and Archway
18 declined to entertain further inquiries.

19 Not much is known about Mr. Ahron Stock, the manager of Levav Group. Warrington
20 Decl., Exh. 18. Public sources reflect that last year he was a defendant in a federal RICO lawsuit,
21 claiming that Mr. Stock was part of a criminal enterprise whereby he and others used alter-ego
22 identities to commit unlawful and fraudulent activities in connection with lending transactions.
23 Warrington Decl., Exh. 20. The RICO action was apparently settled last year, but it is unknown—
24 and not at all disclosed by Broadway—what Mr. Stock’s liabilities are under that settlement or
25 other judgments against him. The internet also shows that Mr. Stock has a civil judgment against
26 him entered three years ago. Warrington Decl., Exh. 19.

27 No judgments have been disclosed by Broadway or Mr. Gomperts, and it is unclear
28 whether Mr. Stock has other judgments against him.

FRANDZEL ROBINS BLOOM & CSATO, L.C.
1000 WILSHIRE BOULEVARD, NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90017-2427
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1 Mr. Stock is also apparently connected with Mr. Schwarcz, as Mr. Stock is the manager of
2 Tipul Group LLC, an entity that is co-owned and/or co-managed by Eli Schwarcz, who is, upon
3 information and belief, a close relative of Mr. Schwarcz. *See* Warrington Decl., Exh. 21 at
4 GERR-223.

5 **C. Archway is trying to uncover what Broadway is not disclosing.**

6 In an effort to uncover the truth about these transactions, Archway has served renewed
7 discovery on Broadway, the proposed tenants, Levav Group and DMB, as well as others,
8 including and the new proposed DIP lender, New Millennia Group.

9 **III. Discussion**

10 The following sections analyze and discuss the applicable legal standards and issues raised
11 by the motion.

12 **A. Broadway has not disclosed material facts regarding these transactions.**

13 A debtor-in-possession, after notice and a hearing, may lease property of the estate outside
14 the ordinary course of business under certain circumstances and if certain requirements are met.
15 *See* 11 U.S.C. § 363(b)(1). Although § 363(b) entails a debtor-in-possession's exercise of its
16 sound business judgment—the business judgment rule is not unfettered and it is subject to
17 principles of good faith which include disclosure of relevant facts and circumstances surrounding
18 the proposed transactions. *See In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D.
19 Cal. 1991) (discussing these principles in the context of a sale motion).

20 Here, Broadway has failed to disclose highly relevant facts and circumstances surrounding
21 the proposed scheme involving the various bad actors and these proposed lease and loan
22 transactions. The Court denied Broadway's prior lease and loan motions after Broadway attempted
23 to withdraw or dismiss those voluntarily. This was all after Archway presented evidence
24 demonstrating that the proposed tenants were connected to nefarious individuals who included
25 Mr. Schwarcz, a disbarred felon convicted in a narcotics money laundering conspiracy a few years
26 ago, and Mr. Bombola, a thief who pilfered assets just a few months ago from a federal receivership
27 and lied to the receiver about it.

1 It has now become known that Mr. Gomperts knew about Mr. Schwarcz's problematic past
2 and misdeeds even before Broadway filed his prior lease and DIP loan motions. In fact,
3 Mr. Gomperts tried to conceal Mr. Schwarcz's connections to DMB by conspiring with him to
4 have his name removed as CEO of DMB. This occurred on the morning of November 5, 2024—
5 before Archway even filed its oppositions which provided evidence of Mr. Schwarcz's misdeeds.
6 The day before, Mr. Bombola and Mr. Schwarcz formed Zenith Management, LLC, the name of
7 the proposed tenant that Broadway removed. The connections between and among Mr. Bombola,
8 Mr. Schwarcz, and Mr. Stock are not being disclosed.

9 Now, Broadway is doubling down on its own coverup. It is apparently telling the Court
10 that DMB is now run by Mr. Gold, not Mr. Schwarcz. No explanation for this last-minute switch
11 is given. Broadway has provided no disclosure of whether Mr. Schwarcz is still involved in this
12 transactions or what Mr. Gold's new involvement is. There is no disclosure about Mr. Gold's
13 connections to Mr. Schwarcz or Mr. Stock's connections to Mr. Schwarcz.

14 The coverup has not been explained by Broadway, but it should be—this is the sole asset
15 of Broadway's estate. Broadway is proposing to bind this estate in a 15-year lease of
16 substantially all of the assets of this Broadway estate with parties who have no track record, no
17 financials, and no evidence of financial wherewithal—and who *still* are connected to nefarious
18 actors. Broadway should disclose who—exactly—are these various proposed tenants.

19 Given the damning evidence against Mr. Schwarcz and Mr. Bombola and given
20 Mr. Gomperts complete failure of his fiduciary duties of disclosure to this estate to and
21 compounded by his duping the Court and everyone else and then covering it up, Broadway should
22 be required to disclose much more than what it has.

23 Archway served discovery to attempt to uncover more about what is going on; however,
24 the proposed tenants have been evading service. *See* Warrington Decl., Exh. 20–21. This does not
25 have any of the hallmarks of a good faith lease and loan transaction.

26 **B. The proposed transactions are not being made in good faith.**

27 “[T]he court and the creditors can only make an ‘articulated business’ judgment regarding
28 the prudence of the sale where there has been a full disclosure of the details of the proposed sale

FRANDZEL ROBINS BLOOM & CSATO, L.C.
1000 WILSHIRE BOULEVARD, NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90017-2427
(323) 852-1000

1 by its proponent....The essential purpose served by disclosure is to ensure that parties in interest
2 are not left entirely at the mercy of the debtor and others having special influence over debtor." *In*
3 *re Wilde Horse Enterprises, Inc.*, 136 B.R. at 841 (discussing disclosure requirements in
4 connection with § 363(b) sale). Self-dealing is an exception to the business judgment rule. *See In*
5 *re AWTR Liquidation Inc.*, 548 B.R. 300, 318, 324 (Bankr. C.D. Cal. 2016) (providing that the
6 business judgment rule is subject to scrutiny for possible self-dealing) (citations omitted).

7 Here, Broadway is not proceeding in good faith. The manager of this debtor in possession
8 is, Mr. Gomperts. He has a major conflict of interests. Mr. Gomperts owes fiduciary duties, as
9 manager of the debtor in possession, to the estate. He and Broadway's other members also have
10 duties under Broadway's operating agreement to fund these capital improvements to the Broadway
11 Property. Moreover, Mr. Gomperts owes fiduciary duties to creditors to avoid unduly risking
12 insolvent Broadway's corporate assets. *See Berg & Berg Enterprises, LLC v. Boyle*, 178 Cal. App.
13 4th 1020, 1041 (2009).

14 By presenting, now on multiple occasions, a lease connected with nefarious bad actors,
15 while not disclosing anything, he is breaching his fiduciary duties. We now know that—even
16 *before* he filed his prior lease motion—he knew about Mr. Schwarcz's recent conviction in
17 relation to a criminal money laundering conspiracy re narcotics—i.e., cocaine. In fact, he hatched
18 a plan with Mr. Schwarcz to take him off the public corporate records connected to DMB—a
19 coverup that occurred before Archway filed its opposition to the prior lease and loan motions. On
20 top of this, Mr. Gomperts apparently did *no* due diligence on Mr. Bombola prior to filing the
21 previous lease and loan motions, so he had no clue about Mr. Bombola's recent misdeeds,
22 including his theft earlier this year from a federal receivership and his contempt for doing that and
23 lying to the receiver about it. Mr. Schwarcz and Bombola's entities were—and are currently—the
24 ones entrusted with handling government grant proceeds to be paid to Broadway.

25 None of this was disclosed in this renewed motion, which violates Local Rule 9013-1(l),
26 but it also fails to disclose material information necessary for the Court, the United States Trustee,
27 and parties in interest to vet these proposed transactions.

28 The Court should deny.

FRANDZEL ROBINS BLOOM & CSATO, L.C.
1000 WILSHIRE BOULEVARD, NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90017-2427
(323) 852-1000

1 **C. The Lease is not in the best interests of the estate.**

2 “In approving any sale outside the ordinary course of business, the court must not only
3 articulate a sufficient business reason for the sale, it must further find it is in the best interest of the
4 estate, i.e. it is fair and reasonable, that it has been given adequate marketing, that it has been
5 negotiated and proposed in good faith, that the purchaser is proceeding in good faith, and that it is
6 an ‘arms-length’ transaction.” *In re Wilde Horse Enterprises, Inc.*, 136 B.R. at 841 (citation
7 omitted).

8 Here, the Lease is not in the best interests of the estate. There is no lease guarantor. There
9 are no financials for the proposed tenants who operate out of a mailbox store. (The financials
10 attached to the renewed motion are not those of Levav Group.) There is no disclosure of the
11 financial wherewithal or track record of the proposed tenants. There is no explanation about how
12 Broadway will fund the \$240,000.00 DIP loan fee which is due on closing (Loan Agreement
13 Dkt. 307-1 at 6), much less the debt service payments or seven-figure balloon payment which is
14 due in one year (Loan Agreement Dkt. 307-1 at 7 and 36). Rent payments do not commence until
15 Broadway obtains a certificate of occupancy (Lease § 4.03.)—a feat which has eluded Broadway
16 for almost a decade. No evidence is provided to show the likelihood of any of Broadway obtaining
17 a certificate of occupancy, much less any benefit being realized by Broadway’s estate as a result of
18 this proposed lease. Instead, the lease and loan, if approved, would result in Broadway
19 immediately being in default and incurring damages including attorney’s fees against the estate.

20 Moreover, even if Broadway did obtain a certificate of occupancy and the proposed tenants
21 were solvent and able to fund rent, such payments would be in danger of being intercepted by
22 judgment creditors of the tenants’ principals. This creates real problems for Broadway’s estate if
23 the lease is approved. For example, Levav’s principal, Mr. Stock, has at least one judgment
24 against him and may have others. Under California’s Enforcement of Judgments Law, any such
25 judgment creditors may seek a charging order against the membership interests in the proposed
26 tenants. Such a charging order would create a permanent lien on such membership interests. See
27 Cal. Civ. Proc. Code § 708.320(a). Any such lien would interfere with the proposed tenants’
28

1 obligations under the Renewed Lease, including its/their obligations to handle operational
2 revenues and to pay rent to Broadway.

3 The Court should deny because the Lease is not in the best interests of the estate.

4 **D. If approved, Broadway would be in immediate breach of the DIP Loan.**

5 Broadway represents in the DIP Loan Agreement that no right of first refusal exists in
6 favor of any tenant under the Lease. *See* DIP Loan Agreement at § 3.1(u) (providing that
7 Broadway represents that “No tenant.... has an option, right of first offer, or right of first refusal,
8 to purchase any Property, any portion thereof or any interest therein.”).

9 This representation by Mr. Gomperts on behalf of Broadway is false. *See* Lease at Art.
10 XIX Dkt. 310 at 42 (reflecting the proposed tenants’ right of first refusal).

11 The same goes for Mr. Gomperts’s representation on behalf of Broadway that Broadway is
12 the free and clear owner of all personal property that “is used in, and is reasonably necessary to,
13 the operation of the Property.” DIP Loan Agreement at § 3.1(z). This is false. Archway has a
14 perfected lien on all rents generated by the Property. *See* Broadway Deed of Trust and AOR.

15 If the Lease is approved, Broadway will immediately be in breach, entitling the DIP
16 Lender to sue Broadway and tack on attorney’s fees. *See* DIP Loan Agreement at § 5.1(d)
17 (providing that a false representation constitutes an “Event of Default” triggering remedies like
18 acceleration, default interest, late charges, attorney’s fees and costs).

19 The Court should not approve the Lease.

20 **E. Broadway has not met its burden to demonstrate adequate protection.**

21 The court “shall prohibit or condition such ... lease as is necessary to provide adequate
22 protection of [an entity that has an interest in property proposed to be leased].” 11 U.S.C. § 363(e).
23 The debtor-in-possession has the burden to prove adequate protection. 11 U.S.C. § 363(p)(1).

24 Broadway cannot meet its burden to demonstrate that Archway is adequately protected.
25 Archway has requested and continues to request adequate protection of its interests.

26 The Property is single-asset-real-estate, well over **250 days** have elapsed since the petition
27 date, and Archway is significantly undersecured on the Broadway Property. Broadway assumes
28 that Archway has no protectable interests, but this is incorrect.

1 Archway holds prepetition perfected liens on the Property, rents, and all personal property
2 rights Broadway as evidenced by its recorded Deed of Trust, Assignment of Rents, Security
3 Agreement, and filed UCC-1 financing statement. Accordingly, Broadway is required to
4 demonstrate—with admissible *evidence*—that Archway’s perfected interests are adequately
5 protected by a defective lease to questionable individuals and entities who lack any financial
6 resources to fund even the most basic requirements under the lease. Moreover, the Lease Motion
7 effectively seeks permission to use Archway’s cash collateral, although not denominating the
8 request as a cash collateral motion.

9 **F. Service of the Renewed Lease Motion is defective.**

10 Contested matters are governed by Rule 9014, which requires the same manner of service
11 as a summons and complaint under Rule 7004. Fed. R. Bankr. P. 9014(b). A contested matter
12 arises as soon as opposition is “known or reasonably foreseeable.” *In re Ephedra Prod. Liab.*
13 *Litig.*, 329 B.R. 1, 7 (S.D.N.Y. 2005) (citing Fed. R. Bankr. P. 9014 advisory committee note). See
14 also Fed. R. Bankr. P. 9014 advisory committee note (“Whenever there is an actual dispute, other
15 than an adversary proceeding, before the bankruptcy court, the litigation to resolve that dispute is a
16 contested matter.... Even when an objection is not formally required, there may be a dispute.”). A
17 formal written objection is not required to create a contested matter. See *In re Baroni*, 643 B.R.
18 253, 299 (Bankr. C.D. Cal. 2022).

19 Here, Broadway did not serve the Lease Motion properly. The Lease Motion is a contested
20 matter. Broadway knew or reasonably should have anticipated at the time it filed the Lease Motion
21 that Archway opposed the relief sought. The Lease Motion also seeks relief that, if granted, would
22 entail the authorization for use of Archway’s cash collateral and proceeds thereof, which is an
23 independent reason why the motion a contested matter. See Fed. R. Bankr. P. 4001(b)(1)(A).

24 Broadway was required to serve the Lease motion in the same manner as a summons and
25 complaint, but it did not do so. Rule 7004(b) requires service on a domestic corporation by first
26 class mail postage prepaid “to the attention of an officer, a managing or general agent, or to any
27 other agent authorized by appointment or by law to receive service of process....” Fed. R. Bankr.
28 P. 7004(b)(3). But here, Broadway did not provide such service to several domestic corporate

FRANDZEL ROBINS BLOOM & CSATO, L.C.
1000 WILSHIRE BOULEVARD, NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90017-2427
(323) 852-1000

1 creditors, including: Alta Fire Pro, California Refrigeration & Supply, Commune Events, Inc., RG
2 Fire Inc, Sienna Rose Inc, and Southern California Edison. Broadway also failed to serve the
3 Lease Motion on any of the proposed tenants or even the DIP Lender. These are all necessary
4 parties, entitled to service in the same manner as a summons and complaint.

5 Because service is defective, the Court should deny.

6 **G. Notice of the Renewed Lease Motion is also defective.**

7 A notice of lease other than in the ordinary course of business under § 363(b) must, among
8 other things, “include … *the terms and conditions of any private sale*” Fed. R. Bankr. P.
9 2002(c)(1) (emphasis added); *see also* Fed. R. Bankr. P. 6004(a).

10 Here, the Lease contains a continuing right of first refusal (“ROFR”) in favor of the
11 proposed tenants, DMB and Levav. *See* Lease at Art. XIX Dkt. 310 at 42. The ROFR prohibits
12 Broadway from selling the Property without permitting the proposed tenants to invoke the ROFR
13 and acquire the Property as part of a private sale pursuant to the ROFR. *See id.* But the terms of
14 the ROFR are not disclosed in the Lease Motion Notice.

15 Accordingly, notice is defective.

16 **H. Broadway failed to provide timely notice of the Renewed Lease Motion.**

17 Local Rule 9013-1(d) provides that a motion on regular notice “The must be filed and
18 served not later than 21 days before the hearing date designated in the notice....”

19 Here, Broadway filed and served the Renewed Lease Motion on November 22, 2024,
20 which provides only 20 days’ notice, not 21 days’ notice as required by Local Rule 9013-1(d).

21 **IV. Conclusion**

22 For the reasons set forth above, the Court should deny the Renewed Lease Motion.

23 DATED: November 27, 2024

FRANDZEL ROBINS BLOOM & CSATO, L.C.

25 By: /s/ Gerrick M. Warrington

26 GERRICK M. WARRINGTON

27 Attorneys for Secured Creditor

28 ARCHWAY BROADWAY LOAN SPE, LLC

FRANDZEL ROBINS BLOOM & CSATO, L.C.
1000 WILSHIRE BOULEVARD, NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90017-2427
(323) 852-1000

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 1000 Wilshire Boulevard, Nineteenth Floor, Los Angeles, CA 90017-2427.

A true and correct copy of the foregoing document entitled (*specify*):

ARCHWAY BROADWAY LOAN SPE, LLC'S OPPOSITION TO RENEWED MOTION OF DEBTOR AND DEBTOR IN POSSESSION BROADWAY AVENUE INVESTMENTS, LLC FOR ORDER AUTHORIZING DEBTOR TO ENTER INTO POST-PETITION LEASE

OMNIBUS DECLARATION OF BOBBY KHORSHIDI IN SUPPORT OF ARCHWAY BROADWAY LOAN SPE, LLC'S OPPOSITIONS TO: RENEWED MOTIONS OF DEBTOR AND DEBTOR IN POSSESSION BROADWAY AVENUE INVESTMENTS, LLC FOR ORDERS AUTHORIZING DEBTOR TO ENTER INTO POST-PETITION LEASE AND AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. § 364;

OMNIBUS DECLARATION OF GERRICK M. WARRINGTON IN SUPPORT OF ARCHWAY BROADWAY LOAN SPE, LLC'S OPPOSITIONS TO: RENEWED MOTIONS OF DEBTOR AND DEBTOR IN POSSESSION BROADWAY AVENUE INVESTMENTS, LLC FOR ORDERS AUTHORIZING DEBTOR TO ENTER INTO POST-PETITION LEASE AND AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. § 364; and

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF ARCHWAY BROADWAY LOAN SPE, LLC'S OPPOSITIONS TO: MOTIONS OF DEBTOR AND DEBTOR IN POSSESSION BROADWAY AVENUE INVESTMENTS, LLC FOR ORDERS AUTHORIZING DEBTOR TO ENTER INTO POST-PETITION LEASE AND AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. § 364.

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **(date)** November 27, 2024, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Counsel to Party in Interest: Scott R Albrecht salbrecht@gsaattorneys.com, jackie.nguyen@sgsattorneys.com
- Counsel to KDM: Tanya Behnam tbehnam@polsinelli.com, tanyabehnam@gmail.com;ccripe@polsinelli.com;ladocketing@polsinelli.com
- Counsel to Party in Interest: Jacquelyn H Choi jacquelyn.choi@rimonlaw.com, docketingsupport@rimonlaw.com
- Counsel to Individual Debtors: Carol Chow Carol.Chow@saul.com, easter.santamaria@saul.com
- Counsel to Party in Interest: Robert F Conte robert.conte@usdoj.gov, caseview.ecf@usdoj.gov;usacac.tax@usdoj.gov
- Counsel to Individual Debtors: Ryan Coy ryan.coy@saul.com, hannah.richmond@saul.com
- Counsel to Party in Interest: Christopher Cramer secured@becket-lee.com
- Counsel to Individual Debtors: Turner Falk turner.falk@saul.com, tnfalk@recap.email
- Counsel to Archway: Michael G Fletcher mfletcher@frandzel.com, sking@frandzel.com
- Counsel to Party in Interest: Todd S. Garan ch11ecf@aldridgepite.com, TSG@ecf.inforuptcy.com;tgaran@aldridgepite.com
- Counsel to Party in Interest: Richard Grgado rgirgado@counsel.lacounty.gov
- Counsel to Party in Interest: Jacqueline L James jjames@hrhlaw.com
- Trial Counsel to U.S. Trustee: Kelly L Morrison kelly.l.morrison@usdoj.gov
- Counsel to Party in Interest: Avi Edward Muhtar amuhtar@crownandstonelaw.com
- Counsel to Archway: Bruce D Poltrack bpoltrock@frandzel.com, achase@frandzel.com
- Counsel to Individual Debtors: Zev Shechtman Zev.Shechtman@saul.com, zshechtman@ecf.inforuptcy.com;hannah.richmond@saul.com
- Counsel to Corporate Debtors: Derrick Talerico dtalerico@wztslaw.com, maraki@wztslaw.com,sfritz@wztslaw.com,admin@wztslaw.com

- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov
- Counsel to Archway: Gerrick Warrington gwarrington@frandzel.com, achase@frandzel.com
- Counsel to Party in Interest: Jennifer C Wong bknotice@mccarthyholthus.com, jwong@ecf.courtdrive.com

Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:

On (date) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state

method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) November 27, 2024, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Overnight Delivery, Early Morning:

The Honorable Vincent P. Zurzolo
U.S. Bankruptcy Court
Roybal Federal Building
Bin outside of Suite 1360
255 E. Temple Street
Los Angeles, CA 90012-3332

Email:

Counsel to Corporate Debtors:
Derrick Talerico dtalerico@wztslaw.com

Counsel to Individual Debtors:

Zev Shechtman Zev.Shechtman@saul.com
Turner Falk turner.falk@saul.com
Ryan Coy ryan.coy@saul.com

United States Trustee:

Kelly L Morrison
Office of the US Trustee
915 Wilshire Blvd., Ste. 1850
Los Angeles, CA 90017
Email: kelly.l.morrison@usdoj.gov

Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

November 27, 2024	Annette Chase	/s/ Annette Chase
Date	Printed Name	Signature